

**Title 18-A: PROBATE CODE**  
**Article 8: Miscellaneous Provisions**

**Table of Contents**

<b>Part 1. RECEIVERSHIPS FOR MISSING AND ABSENT PERSONS.....</b>	<b>3</b>
Section 8-101. ESTATES OF ABSENTEES.....	3
Section 8-102. WARRANT.....	3
Section 8-103. NOTICE.....	3
Section 8-104. PUBLICATION.....	4
Section 8-105. HEARING.....	4
Section 8-106. POSSESSION BY RECEIVER.....	4
Section 8-107. COLLECTION OF DEBTS.....	4
Section 8-108. APPOINTMENT.....	4
Section 8-109. PERISHABLE GOODS.....	5
Section 8-110. SUPPORT OF DEPENDENTS.....	5
Section 8-111. ARBITRATION OF CLAIMS.....	5
Section 8-112. COMPENSATION; CESSATION OF DUTIES.....	5
Section 8-113. TERMINATION OF RECEIVERSHIP.....	6
Section 8-114. LIMITATIONS.....	6
<b>Part 2. ALLOCATION OF PRINCIPAL AND INCOME .....</b>	<b>6</b>
Section 8-201. BONDS AND OBLIGATIONS IN TRUST; VALUATION; AMORTIZATION (REPEALED).....	6
Section 8-202. INCOME EARNED DURING ADMINISTRATION (REPEALED).....	6
Section 8-203. INCOME ON GENERAL DEVISE OF PERSONAL PROPERTY IN TRUST, IN TRUST OR FOR A TERM (REPEALED).....	6
Section 8-204. DIVIDENDS REPRESENTING CAPITAL GAINS (REPEALED).....	6
<b>Part 3. PROCEDURES GOVERNING BONDS.....</b>	<b>6</b>
Section 8-301. APPLICABILITY TO PROCEEDINGS ON OTHER BONDS.....	7
Section 8-302. SURETY ON BOND MAY CITE TRUST OFFICERS FOR ACCOUNTING.....	7
Section 8-303. AGREEMENT WITH SURETIES FOR JOINT CONTROL.....	7
Section 8-304. APPROVAL OF BOND BY JUDGE.....	7
Section 8-305. INSUFFICIENT SURETIES.....	7
Section 8-306. DISCHARGE OF SURETY.....	8
Section 8-307. NEW BONDS OR REMOVAL OF PRINCIPAL.....	8
Section 8-308. REDUCTION OF PENAL SUM WHERE SIGNED BY SURETY COMPANY.....	8
Section 8-309. ACTIONS ON BONDS.....	8
Section 8-310. PRINCIPAL MADE PARTY IN ACTION AGAINST SURETY.....	8
Section 8-311. PROCEEDINGS AND JUDGMENT.....	8

Section 8-312. LIMITATION OF ACTIONS ON BONDS.....	9
Section 8-313. JUDICIAL AUTHORIZATION OF ACTIONS.....	9
Section 8-314. FORFEITURE FOR FAILURE TO ACCOUNT WHEN ORDERED.....	9
Section 8-315. JUDGMENT IN TRUST FOR ALL INTERESTED.....	9
<b>Part 4. EFFECTIVE DATE.....</b>	<b>9</b>
Section 8-401. TIME OF TAKING EFFECT; PROVISIONS FOR TRANSITION.....	10

**Maine Revised Statutes**  
**Title 18-A: PROBATE CODE**  
**Article 8: Miscellaneous Provisions**

**Part 1: RECEIVERSHIPS FOR MISSING AND ABSENT PERSONS**

**§8-101. ESTATES OF ABSENTEES**

If a person entitled to or having an interest in property within the jurisdiction of the State has disappeared or absconded from the place within or without the State where he was last known to be, and has no agent in the State, and it is not known where he is, or if such person, having a spouse or minor child dependent to any extent upon him for support, has thus disappeared or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is known that he is without the State, anyone who would under the law of the State be entitled to administer upon the estate of such absentee if he were deceased, may file a petition under oath in the probate court for the county where such property is situated or found, stating the name, age, occupation and last known residence or address of such absentee, the date and circumstances of the disappearing or absconding, and the names and residences of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, and containing a schedule of the property, real and personal so far as known, and its location within the State, and praying that such property may be taken possession of, and a receiver thereof appointed under this Part. [1979, c. 540, §1 (NEW).]

SECTION HISTORY  
1979, c. 540, §1 (NEW).

**§8-102. WARRANT**

The court may thereupon issue a warrant, directed to the public administrator in the county where the property or some of it is situated, which may run throughout the State, commanding him to take possession of the property named in said schedule and make return of said warrant as soon as may be with his doings thereon with a schedule of the property so taken. The public administrator shall cause so much of the warrant as relates to land to be recorded in the registry of deeds for the county where the land is located. He shall receive such fees for serving the warrant as the court allows, but not more than those established by law for similar service upon a writ of attachment. Fees and the costs of publishing and serving the notice shall be paid by the petitioner. If a receiver is appointed, said fees shall be repaid by the receiver to the petitioner and allowed the receiver in his account. [1979, c. 540, §1 (NEW).]

SECTION HISTORY  
1979, c. 540, §1 (NEW).

**§8-103. NOTICE**

Upon the return of such warrant, the court may issue a notice reciting the substance of the petition, warrant and return, which shall be addressed to such absentee and to all persons who claim an interest in said property, and to all to whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property named in the schedule should not be appointed and said property held and disposed of under this Part. [1979, c. 540, §1 (NEW).]

SECTION HISTORY  
1979, c. 540, §1 (NEW).

## **§8-104. PUBLICATION**

The return day of said notice shall be not less than 30 days nor more than 60 days after its date. The court shall order said notice to be published once in each of 3 successive weeks in one or more newspapers within the said county and a copy to be mailed to the last known address of such absentee. The court may order other and further notice to be given within or without the State. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-105. HEARING**

The absentee or any person who claims an interest in any of the property may appear and show cause why the prayer of the petitioner should not be granted. The court may, after hearing, dismiss the petition and order the property in possession of the public administrator to be returned to the person entitled thereto, or it may appoint the person who, under the law of the State, would be entitled to administer upon the estate of such absentee if he were deceased, or if no such person is known or such person declines to serve, then he may appoint the public administrator for said county as receiver of the property which is in the possession of the public administrator and named in his schedule. If a receiver is appointed, the court shall find and record the date of the disappearance or absconding of the absentee and such receiver shall give bond to the judge of probate and his successors in office in such sum and with such condition as the court orders. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-106. POSSESSION BY RECEIVER**

After the approval of such bond, the court may order the public administrator to transfer and deliver to such receiver the possession of the property under the warrant, and the receiver shall file in the registry of probate a schedule of the property received by him. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-107. COLLECTION OF DEBTS**

Such receiver shall take possession of any additional property within the State which belongs to such absentee and demand and collect all debts due such absentee from any person within the State and hold the same as if it had been transferred and delivered to him by the public administrator. If he takes any additional real estate, said receiver shall file a certificate describing said real estate with the register of deeds for the county where the real estate is located. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-108. APPOINTMENT**

If such absentee has left no corporeal property within the State, but there are debts or obligations due or owing to him from persons within the State, a petition may be filed as provided in section 8-101, stating the nature and amount of such debts and obligations so far as known, and praying that a receiver thereof may be appointed. The court may thereupon issue a notice as provided, without issuing a warrant, and may, upon the return of said notice and after a hearing, dismiss the petition or appoint a receiver and authorize and

direct him to demand and collect the debts and obligations of said absentee. Said receiver shall give bond as provided in section 8-105, and shall hold the proceeds of such debts and obligations and all property received by him and distribute the same as provided. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-109. PERISHABLE GOODS**

The court may make orders for the care, custody, leasing and investing of all property and its proceeds in the possession of the receiver. If any of the said property consists of live animals or is perishable or cannot be kept without great or disproportionate expense, the court may, after the return of the warrant, order such property to be sold at public or private sale. After the appointment of a receiver, upon his petition, the court may order all or part of said property, including the rights of the absentee in land, to be sold at public or private sale to supply money for payments authorized by this subchapter or for reinvestment approved by the court. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-110. SUPPORT OF DEPENDENTS**

The court may order said property or its proceeds acquired by mortgage, lease or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's spouse and dependent children, and to the discharge of such debts and claims for alimony as may be proved against said absentee. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-111. ARBITRATION OF CLAIMS**

The court may authorize the receiver to adjust by arbitration or compromise any demand in favor of or against the estate of such absentee. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-112. COMPENSATION; CESSATION OF DUTIES**

The receiver shall be allowed such compensation and disbursements as the court orders, to be paid out of said property or proceeds. If within 8 years after the date of the disappearance and absconding as found and recorded by the court, such absentee appears, or a personal representative, assignee in insolvency or trustee in bankruptcy of said absentee is appointed, such receiver shall account for, deliver and pay over to him the remainder of said property. If said absentee does not appear and claim said property within said 8 years, all his right, title and interest in said property, real or personal, or the proceeds thereof, shall cease, and no action shall be brought by him on account thereof. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-113. TERMINATION OF RECEIVERSHIP**

If at the expiration of said 8 years said property has not been accounted for, delivered or paid over under section 8-112 the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if said absentee had died intestate within the State on the day 8 years after the date of the disappearance or absconding as found and recorded by the court, except that said receiver shall deduct from the share of each distributee and pay to the State Tax Assessor for the use of the State such amount as said distributee would have paid in an inheritance tax to the State if said distributee had received the property by inheritance from a deceased resident of this State. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-114. LIMITATIONS**

If such receiver is not appointed within 7 years after the date found by the court under section 8-105, the time limited to accounting for, or fixed for distributing, said property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the 8 years provided in sections 8-112 and 8-113. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 2: ALLOCATION OF PRINCIPAL AND INCOME**

### **§8-201. BONDS AND OBLIGATIONS IN TRUST; VALUATION; AMORTIZATION (REPEALED)**

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 544, §3 (RP).

### **§8-202. INCOME EARNED DURING ADMINISTRATION (REPEALED)**

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 544, §3 (RP).

### **§8-203. INCOME ON GENERAL DEVISE OF PERSONAL PROPERTY IN TRUST, IN TRUST OR FOR A TERM (REPEALED)**

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 544, §3 (RP).

### **§8-204. DIVIDENDS REPRESENTING CAPITAL GAINS (REPEALED)**

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 544, §3 (RP).

## **Part 3: PROCEDURES GOVERNING BONDS**

**§8-301. APPLICABILITY TO PROCEEDINGS ON OTHER BONDS**

Except as otherwise provided by law, and insofar as the provisions of this Part are applicable, like proceedings, judgment and execution shall be had on the bonds given to any judge by personal representatives, guardians, conservators, trustees, surviving partners, assignees of insolvent debtors and others, in the manner provided in this Part. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§8-302. SURETY ON BOND MAY CITE TRUST OFFICERS FOR ACCOUNTING**

Whenever any surety on any bond has reason to believe that the trust officer has depleted or is wasting or mismanaging the estate, the surety may cite the trust officer before the judge of probate as provided in section 3-110. If upon hearing the judge is satisfied that the estate held in trust by such officer has been depleted, wasted or mismanaged, he may remove the trust officer and appoint another in his stead. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§8-303. AGREEMENT WITH SURETIES FOR JOINT CONTROL**

It shall be lawful for any party of whom a bond, undertaking or other obligation is required to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible with a national bank, savings banks, safe-deposit or trust company, authorized by law to do business as such in this State, or with other depository approved by the court having jurisdiction over the trust or undertaking for which the bond is required, or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of such court or judge thereof, made on such notice to such surety or sureties as such court or judge may direct. Such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the said bond. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§8-304. APPROVAL OF BOND BY JUDGE**

Except as otherwise provided by sections 3-603 to 3-606, 4-204, 4-207, 5-411, 5-412 and 5-432 and Title 18-B, section 702, no bond required to be given to the judge of probate or to be filed in the probate office is sufficient until it has been examined by the judge and the judge's approval has been written thereon. [2003, c. 618, Pt. B, §15 (AMD); 2003, c. 618, Pt. B, §20 (AFF).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B15 (AMD). 2003, c. 618, §B20 (AFF).

**§8-305. INSUFFICIENT SURETIES**

When the sureties in any such bond are insufficient the judge, on petition of any person interested and with notice to the principal, may require a new bond with sureties approved by him. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-306. DISCHARGE OF SURETY**

On application of any surety or principal in such bond, the judge on the due notice to all parties interested may, in his discretion, discharge the surety or sureties from all liability for any subsequent but not for any prior breaches thereof, and may require a new bond of the principal with sureties approved by him. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-307. NEW BONDS OR REMOVAL OF PRINCIPAL**

In either case, if the principal does not give the new bond within the time ordered by the judge, he shall be removed and another appointed. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-308. REDUCTION OF PENAL SUM WHERE SIGNED BY SURETY COMPANY**

If a surety company becomes surety on a bond given to a judge of probate, the court may, upon petition of any party in interest and after due notice to all parties interested, reduce the penal sum in which the principal and surety shall be liable for a violation thereafter of the conditions of said bond. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-309. ACTIONS ON BONDS**

Actions or proceedings on probate bonds of any kind payable to the judge may be commenced by any person interested in the estate or other matter for which the bond was given, either in the probate court in which the bond was filed or in the Superior Court of that county. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-310. PRINCIPAL MADE PARTY IN ACTION AGAINST SURETY**

If the principal in any such bond resides in the State when an action is brought thereon, and is not made a party thereto, or if at the trial thereof, or on proceedings on a judgment against the sureties only, he is in the State, the court, at the request of any such surety, may postpone or continue the action long enough to summon or bring him into court. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-311. PROCEEDINGS AND JUDGMENT**

Such surety may thereupon take out a writ, in the form prescribed by the court, to arrest the principal, if liable to arrest, or to attach his estate and summon him to appear and answer as a defendant in the action. If, after 14 days' previous service of such process, he fails thus to appear at the time appointed and judgment



is rendered for the plaintiff, it shall be against him and the other defendants as if he had been originally a party, and any attachment made or bail taken on such process is liable to respond to the judgment as if made or taken in the original action. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-312. LIMITATION OF ACTIONS ON BONDS**

Except in the case of personal representatives provided for under sections 3-1005 and 3-1007, and insofar as applicable under the provisions of section 8-301, an action on a bond must be commenced within 6 years after the principal has been cited by the court to appear to settle his account or, if not so cited, within 6 years from the time of the breach of his bond, unless the breach is fraudulently concealed by the principal or surety from the persons pecuniarily interested and who are parties to the action, and in such case within 3 years from the time such breach is discovered. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-313. JUDICIAL AUTHORIZATION OF ACTIONS**

The judge of probate may expressly authorize or instruct a personal representative or other fiduciary, at the judge's discretion or on the complaint of any interested person, to commence an action on the bond for the benefit of the estate. Nothing herein may be deemed to limit the power or duty of a successor fiduciary to bring such proceedings as they are authorized to bring without express court authorization under section 3-606, subsection (a), paragraph (4); section 5-412, subsection (a), paragraph (3); Title 18-B, section 702; or as otherwise provided by law. [2003, c. 618, Pt. B, §16 (AMD); 2003, c. 618, Pt. B, §20 (AFF).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B16 (AMD). 2003, c. 618, §B20 (AFF).

## **§8-314. FORFEITURE FOR FAILURE TO ACCOUNT WHEN ORDERED**

When it appears in any action of a bond against a principal that he has been cited to account for such personal property of the estate as he has received, and has not done so, execution shall be awarded against him for the full value thereof, without any allowance for charges of administration or debts paid. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§8-315. JUDGMENT IN TRUST FOR ALL INTERESTED**

Every judgment and execution in an action on the bond shall be recovered by the judge in trust for all parties interested in the penalty of the bond. The judge shall require the delinquent fiduciary to account for the amount, if still in office, or assign it to his successor to be collected and distributed or otherwise disposed of as assets. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 4: EFFECTIVE DATE**

**§8-401. TIME OF TAKING EFFECT; PROVISIONS FOR TRANSITION**

(a). This Code takes effect on January 1, 1981.

[ 1979, c. 540, §1 (NEW) .]

(b). Except as provided elsewhere in this Code, on the effective date of this Code:

(1). The Code applies to any wills of decedents dying thereafter; [1979, c. 540, §1 (NEW) .]

(2). The Code applies to any proceedings in Court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code; [1979, c. 540, §1 (NEW) .]

(3). Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done thereafter and a guardian appointed prior to January 1, 1981 shall have the powers conferred by this Code on guardians and conservators, unless otherwise limited by the original order of appointment or subsequent court order under this Code; [1981, c. 127, §1 (AMD) .]

(4). An act done before the effective date in any proceeding and any accrued right is not impaired by this Code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; [1979, c. 540, §1 (NEW) .]

(5). Any rule of construction or presumption provided in this Code applies to instruments executed and multiple party accounts opened before the effective date unless there is a clear indication of a contrary intent; and [1979, c. 540, §1 (NEW) .]

(6). For an adoption decree entered before the effective date and not amended after the effective date, the child shall be the child of both the natural and adopting parents for purposes of intestate succession, notwithstanding section 2-109, subsection (1), unless the decree provides otherwise. [1979, c. 540, §1 (NEW) .]

[ 1981, c. 127, §1 (AMD) .]

**SECTION HISTORY**

1979, c. 540, §1 (NEW). 1981, c. 127, §1 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 127th Maine Legislature and is current through October 1, 2016. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.